

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ORIENTAL MEDICAL SUPPLIES, INC., and  
LHASA OMS, INC.,

Plaintiffs

v.

ASIA-MED GMBH & CO. KG, AM HOLDINGS, LLC, As  
General Partner of ASIAMED PROFESSIONAL,  
LIMITED PARTNERSHIP, AM HOLDINGS, LLC,  
KLAUS TEICHERT, and MICHAEL JOY,

Defendants.

03-12234 JLT

CIVIL ACTION NO:

**AFFIDAVIT OF THOMAS A. RIIHIMAKI**

I, Thomas A. Riihimaki, upon my own personal knowledge, under oath, hereby  
depose and state as follows:

1. I am currently President and Chief Executive Officer of Oriental Medical  
Supplies, Inc. ("OMS"). OMS is a Massachusetts corporation, with a principal place of  
business at 230 Libbey Parkway, Weymouth, Massachusetts 02189.

2. OMS is in the business of the importation and wholesale sale of oriental  
medical supplies, including acupuncture needles, and other health related products. OMS  
is the exclusive distributor of Seirin brand acupuncture needles for Seirin-America, Inc.  
in the United States.

3. I also assist management with the daily operations of Lhasa OMS, Inc.  
("Lhasa OMS"). In particular, I assist my wife Kyung P. Riihimaki, who is the President  
and Chief Executive Officer of Lhasa OMS, with the operation of the business. Lhasa

OMS is a Massachusetts corporation also with a principal place of business at 234 Libbey Parkway, Weymouth, Massachusetts, 02189. Lhasa OMS was originally incorporated as Lhasa Medical, Inc. in February 1990. Lhasa Medical, Inc. officially changed its name to Lhasa OMS, Inc. on July 25, 2003. My wife and I are sole shareholders of OMS, and my wife is the sole shareholder of Lhasa OMS.

4. Lhasa OMS is engaged in the business retail and wholesale sale of oriental medical supplies, particularly Seirin brand acupuncture needles, and other health-related products.

5. In 2003, OMS reorganized its business. Lhasa OMS assumed responsibility for retail and wholesale sales of oriental medical supplies that had previously been undertaken by OMS, including acupuncture needles.

6. OMS has been using the mark "OMS" in connection with its oriental medical supply business since at least 1980 and has held United States trademark registration No. 2,280,353 since September 28, 1999. A true and accurate copy of the OMS registration is attached as Exhibit "A".

7. In July 2003, OMS licensed the right to use its "OMS" mark to Lhasa OMS in connection with the Lhasa OMS name and corporate logo.

8. Lhasa OMS and/or Lhasa Medical have used the "LHASA" mark in connection with its oriental medical supply business since, at least, January 24, 1990. On September 23, 2002, Lhasa OMS (then Lhasa Medical) filed an application for United States trademark registration, serial number 76/454047, for the mark "LHASA". A true and accurate copy of the registration is attached as Exhibit "B".

9. Lhasa OMS has been using the term "LHASA OMS" in connection with its oriental medical supply business since July 2003. Lhasa OMS filed an application for United States trademark registration for "LHASA OMS" and for its logo on November 4, 2003. A true and accurate copy of the application is attached as Exhibit "C".

10. Michael Joy was employed by Lhasa OMS until September 17, 2003. Mr. Joy had been an employee of Lhasa Medical or Lhasa OMS for ten (10) years when he resigned as Senior Manager of Lhasa OMS. Mr. Joy also assisted me with managing the operations of OMS.

11. Mr. Joy had access to the most sensitive confidential and proprietary business information of Lhasa OMS and OMS. We trusted Mr. Joy. Mr. Joy was one of only four employees who held a password necessary to gain access to the computerized databases of the companies. The computerized databases stored confidential information regarding Lhasa OMS and OMS suppliers and customers, particularly vendor order specifications, pricing schedules, and specialized pricing schedules for master dealers. Mr. Joy also assisted in the reorganization of the companies in the spring and summer of 2003, when Lhasa OMS assumed the retail and wholesale sales operations of OMS. Mr. Joy was able to review daily sales reports. Mr. Joy was also involved in and aware of the marketing plans, business development strategies, and product development and distribution efforts of Lhasa OMS and OMS. Mr. Joy attended trade shows to promote the products of Lhasa OMS and OMS. Mr. Joy's duties and responsibilities included assisting in advertising campaigns for Lhasa OMS and OMS, conducting customer service activities, and interacting with customers and suppliers of Lhasa OMS and OMS products. Mr. Joy assisted management with devising and implementing the business and

marketing plans for Lhasa OMS and OMS, including, but not limited to, plans or discussions to engage in exclusive distribution contracts with Korean and Chinese manufacturers of acupuncture needles.

12. In July 2003, Mr. Joy assisted me in preparing a patent application for Lhasa OMS filed with the United States Patent and Trademark Office for a new acupuncture needle developed by a leading Korean manufacturer and jointly filed with Lhasa OMS.

13. Asia-Med GMBH and Co., KG ("Asia-Med") is a competitor of Lhasa OMS in the oriental medical supply industry. Asia-Med manufactures and distributes acupuncture needles in Europe. Dr. Klaus Teichert is the President of Asia-Med.

14. In 2002, Asia-Med undertook efforts to enter the American acupuncture needle market. In November 2002, Dr. Teichert first approached my wife and I and offered to acquire the business of OMS. In particular, Dr. Teichert stated his interest in acquiring Seirin-America, Inc. Seirin-America, Inc. owns the exclusive United States wholesale distribution rights for the Seirin brand of acupuncture needles which are manufactured by Seirin-Corporation, a Japanese company. OMS manages and controls the wholesale distribution for the Seirin brand of acupuncture needles, which are sold at retail and wholesale by Lhasa OMS. Mr. Joy was aware of Asia-Med's attempts to acquire OMS.

15. Negotiations continued between Asia-Med and OMS from February 2003 through June 2003. During this time, Dr. Teichert visited the offices of OMS in Weymouth, Massachusetts on a number of occasions and met Mr. Joy. Mr. Joy was also aware of the status of the negotiations and discussions with Dr. Teichert.

16. In conjunction with the negotiations, Asia-Med executed a confidentiality and non-disclosure agreement, whereby Dr. Teichert agreed not to utilize any of the confidential or proprietary business information of OMS provided during the course of business negotiations for any purpose. A true and accurate copy of the confidentiality agreement is attached hereto at Exhibit "D". During the course of the negotiations, I provided Dr. Teichert's accountants with confidential and proprietary business information of OMS. Dr. Teichert also learned of the business plan to change the name of Lhasa Medical to Lhasa OMS, and of the planned promotional campaign to market the new entity.

17. During the course of negotiations regarding the acquisition of OMS, Dr. Teichert told me that Asia-Med intended to take-over the United States distribution of Seirin acupuncture needles. Dr. Teichert stated to me on numerous occasions, in words or in substance, that Asia-Med would directly target, harm, and take away OMS business unless OMS sold the business to Asia-Med. Dr. Teichert also stated to me that he had used similar methods to acquire the exclusive rights to import and distribute Seirin acupuncture needles in Europe.

18. On behalf of OMS, my wife and I finally rejected Dr. Teichert's acquisition proposals in June 2003. Dr. Teichert was angry. Dr. Teichert responded by stating he intended to take steps to weaken OMS and harm its business in the United States. Dr. Teichert told us that, at a later date, he would offer much less money since the business would lose value due to his actions, and that we should not miss this opportunity to sell OMS to him now.

19. Commencing in the spring of 2003, Lhasa OMS undertook, at substantial expense, a campaign to promote sales of oriental medical supplies under the Lhasa OMS name. Beginning in July 2003, Lhasa OMS sent existing customers and prospective customers a letter informing them of the name change. A true and accurate copy of the letter sent by Lhasa OMS to customers is attached hereto at Exhibit "E".

20. A central component of the Lhasa OMS sales and marketing campaign was the creation of a new web-site. On May 29, 2003, I instructed Mr. Joy, as Senior Manager, to register the domain names of www.lhasaoms.com and www.lhasaomsmedical.com (hereinafter collectively the "Domain Names"). The purpose of the registration was to secure the Domain Names as the property of and on behalf of Lhasa OMS in conjunction with the extensive marketing campaign, including the creation of the Lhasa OMS web-site at www.lhasaoms.com. I authorized Mr. Joy to use my credit card to pay for the on-line registration of the Domain Names.

21. On or about May 29, 2003, Mr. Joy represented to me that he had registered the Domain Names as I had requested. Mr. Joy provided me with a computer-generated document, and told me that it was a copy of the on-line registration form confirming the registration of the Domain Names. A true and accurate copy of the document Mr. Joy presented to me showing the Domain Names registrations is attached as Exhibit "F".

22. I relied upon the representations made by Mr. Joy about the purported registration of the Domain Names on May 29, 2003. Commencing in July 2003, Lhasa OMS referred to the new web-site at www.lhasaoms.com in its new catalog and on its new product order forms. A true and accurate copy of the Lhasa OMS revised customer

order form is attached hereto at Exhibit "G". After Mr. Joy represented that he had registered the Domain Names on behalf of Lhasa OMS as instructed, Lhasa OMS printed and mailed in excess of 10,000 catalogs to acupuncture practitioners in August, September, and October of 2003. The catalogs prominently displayed the address of the for the new web site and stated: "We welcome you to visit our new web site. Beginning in the fall of 2003, we will be offering a detailed easy to use search, user friendly interface, Quick order and Quick search features, and lots of room for browsing." A true and accurate copy of excerpts from the Lhasa OMS new catalog, promoting the new web-site, are attached hereto at Exhibit "H". Lhasa OMS also retained the services of a web-designer to develop the new web-site using the address [www.lhasaoms.com](http://www.lhasaoms.com) and internet links for operation in the fall of 2003.

23. Unknown to me and to Lhasa OMS, Mr. Joy did not register any of the Domain Names on behalf of Lhasa OMS. Mr. Joy falsely represented to me that he had completed the Domain Names registration on behalf of Lhasa OMS.

24. After Dr. Teichert failed in his efforts to acquire OMS, he established new companies, with offices located in Boston, to sell oriental medical supplies, including acupuncture needles, in the United States. AM Professional Supplies, Limited Partnership was formed on August 14, 2003, as set forth in the records of the Delaware Secretary of State, attached hereto at Exhibit "I". AM Professional Supplies registered to do business in Massachusetts on August 20, 2003, as set forth in the documents obtained from the Massachusetts Secretary of State, attached hereto at Exhibit "J". AM Professional Supplies subsequently changed its name to Asiamed Professional, Limited Partnership in Delaware on September 25, 2003, as set forth in the documents at Exhibit

“T”. AM Professional Supplies changed its name to Asiamed Professional with the Secretary of State of Massachusetts on September 30, 2003, as set forth in Exhibit “J”. AM Holdings, LLC is the General Partner of the limited partnership. AM Holdings was established in Delaware on August 11, 2003 and registered to do business in Massachusetts of August 19, 2003, as set forth in the records attached hereto at Exhibit “K”. Dr. Teichert is listed as the Managing Director of AM Holdings, LLC, as set forth in the records at Exhibit “K”.

25. Asiamed Professional opened offices in Boston. Asiamed Professional competes directly with Lhasa OMS in the oriental medical supply industry. Asiamed Professional recently attended an acupuncture trade show focused on the United States market in San Diego, California, which Lhasa OMS also attended. Asiamed Professional presented its oriental medical products at the trade show.

26. As part of the company reorganization in the spring of 2003, Mr. Joy made recommendations on employees to terminate. Mr. Joy recommended the termination of an assistant manager, William Eppich. After Mr. Eppich was terminated, Mr. Joy told me that Mr. Eppich had contacted Dr. Teichert about employment. One or two months later, I asked Mr. Joy if he knew anything more about Mr. Eppich’s possibly working for Dr. Teichert. Mr. Joy said he did not know. I understand that Mr. Eppich is currently employed by Asiamed Professional in Boston as Director of Sales. Copies of the Asiamed Professional business cards of Mr. Eppich, Mr. Joy, and Dr. Teichert, obtained from the San Diego trade show on November 9, 2003, are attached hereto at Exhibit “L”.



27. In or about May of 2003, I noticed a change in Mr. Joy's demeanor. He appeared distant and generally less interested in the business.

28. On September 17, 2003, Mr. Joy suddenly announced his resignation from Lhasa OMS. He came to the office and handed us his resignation letter. Mr. Joy said nothing about the Domain Names. In his resignation letter, Mr. Joy stated that he would be working with AM Professional Supplies and Dr. Teichert, and that he had been considering leaving Lhasa OMS for "quite a while." A true and accurate copy of the resignation letter of Mr. Joy is attached as Exhibit "M".

29. Mr. Joy currently holds the position of Director of Business Development for Asiamed Professional in Boston, as described in his Asiamed Professional business card, attached at Exhibit "L".

30. After Mr. Joy resigned, Lhasa OMS continued with its sales and marketing campaign, including developing the new web-site utilizing [www.lhasaoms.com](http://www.lhasaoms.com) that Mr. Joy had purportedly registered in May of 2003. To date, Lhasa OMS has expended in excess of \$16,000.00 to design its new web-site.

31. On November 3, 2003, as Lhasa OMS was making final preparations to make the new web-site operational, our web-site designer notified me that the [www.lhasaoms.com](http://www.lhasaoms.com) domain name, which Mr. Joy told me he had registered for Lhasa OMS, was already taken by a registrant other than Lhasa OMS, and was not available for use as part of the new web-site.

32. I immediately investigated the situation, and obtained copies of the Network Solutions, Inc. "Whois" reports for each Domain Name. From the "Whois" reports, I learned that AM Professional Supplies was listed as the registrant of

www.lhasaoms.com, www.lhasaoms.net, and www.lhasaoms.org, hereinafter collectively referred to as the “Lhasa OMS Domain Names”, registered on September 18 and 29, 2003. True and accurate copies of the Network Solutions, Inc. “Whois” reports for each domain name, printed on November 3, 2003, are attached as Exhibits “N”, “O”, and “P”.

33. After AM Professional Supplies changed its name to Asiamed Professional, AM Professional Supplies did not change the contact information for the registration of the Lhasa OMS Domain Names to reflect the change in its name.

34. Asiamed Professional currently controls the Lhasa OMS Domain Names. Because of the registration by AM Professional Supplies, now Asiamed Professional, Lhasa OMS cannot use www.lhasaoms.com, .net, or .org domain names as part of its new web-site. The Lhasa OMS web-site, which was also to include links to the web-site of Lhasa Medical and OMS, is not operational as anticipated. Lhasa OMS customer service representatives have received complaints from customers that they are not able to access the Lhasa OMS web-site.

35. Since September 2003, I have learned that Asiamed Professional has contacted at least one existing vendor of Lhasa OMS. Asiamed Professional sought to purchase from this vendor oriental medical supply products used for retail sales to customers. Mr. Joy knew of the marketing and sales strategies of Lhasa OMS, and knew of the vendors utilized by Lhasa OMS to purchase products for sale. Based upon the information I received from this vendor, I believe that Mr. Joy has disclosed to Asiamed Professional the marketing and sales strategies of Lhasa OMS. I believe Asiamed

Professional intends to target existing Lhasa OMS customers to sell the same products utilizing information Mr. Joy learned while working for Lhasa OMS.

36. Lhasa OMS will suffer irreparable harm to its business if Asiamed Professional is permitted to continue to utilize the Lhasa OMS Domain Names to the exclusion of Lhasa OMS, and the confidential and proprietary business information of Lhasa OMS in the possession of Mr. Joy. The confidential and proprietary business information Mr. Joy has about Lhasa OMS, if shared with Asiamed Professional, will substantially disadvantage the ongoing and prospective business of Lhasa OMS. Mr. Joy has knowledge about the operations of the business of Lhasa OMS and strategies for future business expansion. Lhasa OMS would already have its web-site operational for customer access if Mr. Joy had not failed to register the Domain Names as required in May 2003. Mr. Joy knows that the Lhasa OMS Domain Names are critical to the business of Lhasa OMS, particularly in light of the recent name change. All of the new Lhasa OMS marketing materials sent to thousands of customers and prospective customers reference the new Lhasa OMS web-site at [www.lhasaoms.com](http://www.lhasaoms.com).

37. I am also concerned that customers or prospective customers will be confused when they learn that AM Professional Supplies or Asiamed Professional, competitors of Lhasa OMS, are the named registrants of the Lhasa OMS Domain Names. I do not know what Asiamed Professional will tell customers who inquire about the Lhasa OMS web-site, or why AM Professional Supplies or Asiamed Professional owns the Lhasa OMS Domain Names, rather than Lhasa OMS.

38. Mr. Joy must be stopped immediately from disclosing the confidential and proprietary business information of Lhasa OMS. Asiamed Professional must be required

to return immediately the Lhasa OMS Domain Names. Otherwise, the entire business operations of Lhasa OMS are in jeopardy.

SWORN TO AND SIGNED UNDER THE PAINS AND PENALTIES OF  
PERJURY THIS 11<sup>th</sup> DAY OF NOVEMBER, 2003.

  
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Thomas A. Riihimaki